

Public-Private Education and Infrastructure Facilities Act of 2002 (PPEA)

Instructions to Proposers

(November 9, 2004)

The PPEA allows the Virginia Department of Social Services (VDSS) to develop innovative public-private partnerships with its industry partners through solicited and unsolicited proposals for projects for which VDSS determines there is a public need. Due to its commitment to build success through partnerships, VDSS is interested in receiving qualified proposals that support its strategic direction.

The Public-Private Education Facilities and Infrastructure Act of 2002, §56-575.1 *et seq.* of the *Code of Virginia* (the “PPEA”) allows VDSS to create public-private partnerships for the development of a wide range of projects for public use if VDSS determines the project serves a public purpose and that private involvement may provide the project in a timely or cost-effective fashion. In order for a project to be eligible under the PPEA, it must meet the definition of a “qualifying project.” The PPEA established requirements for the review and approval of proposals received pursuant to the PPEA. In addition, the PPEA specifies the criteria that must be used to select a proposal and the contents of any comprehensive agreement between VDSS and the private entity. VDSS will follow the Secretary of Administration’s Model Procedures to review PPEA proposals.

There are three guides proposers must follow in preparing a PPEA proposal for VDSS:

- The Secretary of Administration’s Model Procedures
<http://www.administration.virginia.gov/Services/Vendors/PPEIA.cfm>
- The Virginia Information Technology Agency’s (VITA) Desirable Attributes
<http://www.vita.virginia.gov/ppea/attributes.cfm>
- Items addressed in Section II.B. of this document.

In the event VDSS publishes additional desirable attributes for a particular project, they will be posted on the department’s web site and should also be addressed in the PPEA proposal.

I. Point of Contact for Submission of Proposals:

All PPEA proposals should be submitted by mail or hand delivered to:

Commissioner
Virginia Department of Social Services
c/o Office of General Services, PPEA Proposals
7 North Eighth Street, Vault Level
Richmond, Virginia 23219

PPEA questions or requests may be sent via e-mail to:
unsolicited.proposals@dss.virginia.gov.

II. Proposal Instructions for Submission of PPEA Proposal

Proposals shall provide a straightforward, concise delineation of capabilities, experience and approach. Elaborate brochures and/or excessive promotional materials are not required or desirable.

A. All PPEA proposals (conceptual and detailed phase) should follow the following format:

- The Proposal shall contain information and be formatted as described in the *Commonwealth of Virginia Public-Private Education Facilities and Infrastructure Act of 2002* (Model Procedures), Section VI., entitled Proposal Preparation and Submission. In the event VDSS publishes additional attributes for a particular project, those attributes should be addressed in the proposal.
- All submitted proposals shall be clearly marked as a “PPEA Proposal”
- To be considered, one original, 6 hard copies, and 10 electronic copies of any unsolicited or solicited proposals must be submitted. The applicable fee must be paid to VDSS in certified funds, for all unsolicited proposals. Unsolicited proposals are those which no Request for Proposals (RFP) was published. Submission of competing proposals in response to an unsolicited proposal must include payment of the applicable review fee. (See Section III – Proposal Review Fee)
- The proposal cover page must include title of the Proposal, the name and address of the proposing entity, the individual authorized to act on behalf of the proposer and his or her telephone number and email address.
- An authorized representative of the firm or consortium making the Proposal must sign the Proposal.
- The Proposal should contain a table of contents, which cross-references all Secretary of Administration proposal requirements.
- An additional cross-reference table must be included that cross-references VDSS desirable attributes associated with a particular PPEA topic of interest, if published by VDSS. This table must also cross-reference all VITA desirable attributes.
- All pages of the proposal should be consecutively numbered.
- Each copy of the proposal should be bound or otherwise contained in a single volume where practicable.
- All proposal documentation for which a claim of confidentiality is made must be submitted in a separately bound volume clearly marked as confidential to reduce the potential for inadvertent disclosure.

- B.** As an “In-Scope” agency to VITA, VDSS has adopted all of the VITA Desirable Attributes for a PPEA proposal:
<http://www.vita.virginia.gov/ppea/attributes.cfm>. In answering each of these questions, proposers should substitute the name VDSS in place of VITA. In addition, all submitted proposals should address the following, in addition to the requirements of the Model Procedures and VITA Desirable Attributes:

- **Qualifications and Experience**
All major and minor subcontractors, including multiple layers of subcontractors (subcontractors of subcontractors, etc.) that will be associated with the proposal or proposed implementation must be identified in order to satisfy Federal conditions. The following must be included for each firm:
 - Name of Entity
 - Address of Entity
 - Federal Identification Number (FIN)
 - Type of Services providedIt is the proposer’s responsibility to inform VDSS of real or apparent conflicts of interest involving the prime or any level of subcontractor throughout the PPEA process.
- **Project Characteristics**
 - Proposal should include sufficient data, analysis and information sufficient to satisfy VDSS that the project would serve a public purpose and is a qualifying project as required by the PPEA.
 - Provide information about how the project is aligned with VDSS’ strategic goals for technology.
 - If the submission involves an Information Technologies (IT) project, provide information about how the proposal satisfies Virginia Information Technologies Agency (VITA) requirements for IT project management and technology.
- **Financing**
 - Proposal must include sufficient financial information which evidences the proposer’s financial stability and an ability to provide financing to support the project.
 - The financial plan for the proposed project must contain enough detail, including cost benefit and tax analysis studies, so that an analysis will reveal whether the proposed financing is feasible.
- **References**
 - Each proposal should provide reference information for three to five successful relevant projects completed by the proposer within the last five years. References should include the following information:
 - Project owner/sponsor (business name and address).

- Owner/sponsor's Project manager (name, telephone and fax numbers).
 - Project summary, budget and final cost.
 - Project schedule (proposed and actual).
- For each partner or subcontract, at least two termination/exit references of comparable size and complexity. In addition, references for the largest termination and transition in the most recent history must also be provided, regardless of size and complexity. The termination references must include all information in the general reference requirement above.
- Lawsuits or Arbitration Proceedings
 - Each proposal should include a list and explanation of all lawsuits and arbitration proceedings during the past three years involving any of the proposing firms or any of its principles.
- Potential Negative Impact
 - Discussions of potential Negative Impact must be both realistic and thorough. The proposer should provide detail plans about how to address and resolve potential negatives.
- Location of Prime and Subcontractor Staffing Resources
 - Detail the locations of staffing resources, especially operations, infrastructure, call center, and development/maintenance staff, including subcontractors.
 - If any resources outside the United States will be used for this project by either the prime or subcontractors, detail the plans for reporting their use and avoiding a negative perception for their use.

III. Proposal Review Fee

For unsolicited proposals, VDSS will require an initial processing fee of \$5,000 to cover the cost of processing, reviewing and evaluating any unsolicited proposal or unsolicited competing proposal. If during the initial review VDSS decides not to proceed to the publication and conceptual-phase review of an unsolicited proposal, the proposal fee shall be refunded to the proposer. If VDSS chooses to proceed with the evaluation of any proposal to the conceptual stage, it shall not do so until the entire, non-refundable proposal review fee of \$45,000 has been paid to VDSS by the proposer.

No fee will be charged by VDSS to process, review or evaluate any solicited proposal. Solicited proposals are those received in response to a Request for Proposals (RFP) issued by VDSS to invite proposals under the PPEA.

IV. PPEA Proposals and the Freedom of Information Act

Proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act (“FOIA”). Proposers should refer to the requirements of §2.2-3705 (A) 56 and §56-575.4 (G) of the *Code of Virginia* and Section II.D. of the *Commonwealth of Virginia Public-Private Education Facilities and Infrastructure Act of 2002* dated December 2002 (Model Procedures) regarding confidential and proprietary information.

V. Protection of Confidential Information

If VDSS should decide to accept a proposal for consideration at the Conceptual Phase, and VDSS is satisfied that the proposer’s proprietary and confidential information designation is in compliance with the PPEA Model Procedures, Section II.D., and *Code of Virginia*, the proposer shall move all information deemed to be public in the Confidential Volume to the Public Volume. The proposer shall provide VDSS updated hard copies and electronic copies of its Conceptual Phase proposal.

VI. Public Notice Inviting Competing Proposals

If VDSS receives an unsolicited proposal that it decides to accept and consider or issues a RFP to invite proposals pursuant to the provisions of the PPEA, VDSS will post notice inviting competing proposals, or advertise for proposals in accordance with the *Public-Private Education Facilities and Infrastructure Act of 2002* and the *Commonwealth of Virginia PPEA Procedures dated December, 2002*, (Model Procedures).

In order to permit free and open competition, the Public Notice inviting competing proposals or the RFP will be advertised in newspapers having general circulation, and eVA as prescribed in the Public-Private Education Facilities and Infrastructure Act of 2002 and the Model Procedures.

VII. Public Posting of Conceptual Phase Proposals

If VDSS receives an unsolicited proposal that it decides to accept and consider, the public volume of the initial Proposal will be posted on the VDSS website for a minimum of 45 days. However, any proposal affecting local jurisdictions will be posted on the VDSS website for a minimum of 60 days. The length of time a proposal is posted will be determined by VDSS based upon the complexity and scope of the posted initial Conceptual Proposal and desired attributes. The public volume of all competing conceptual proposals will be posted on the VDSS website as they are received, including any updated proposals received during the notice period.

Following the close of the posting period and after VDSS has reached agreement with the proposer(s) regarding information that is confidential, VDSS will post on

its website the public volume of all competing and updated conceptual phase proposals for sixty (60) calendar days for review and comment by affected local jurisdictions.

VIII. Factors Used in Evaluating Proposals

The factors used by VDSS in evaluating any proposal received in response to an RFP or Public Notice will be those stated in the *Public-Private Education Facilities and Infrastructure Act of 2002*, the Model Procedures, and published desirable attributes. It is not necessary that these factors be advertised or posted, as it is incumbent upon potential proposers under the PPEA to be well versed in the Code of Virginia and the Model Procedures and to familiarize themselves with the requirements included therein. Vendors should be aware that all affected local departments of social services must be provided copies of the public volume of the proposal at both the conceptual and detailed stages, and that local input will be requested and taken into consideration by VDSS.

IX. Presentations and Other Information

VDSS may invite, or allow if requested, presentations or provision of other requested or supplemental information. It is not required that presentations be invited and/or allowed. VDSS may determine that there is sufficient information available to evaluate a proposal without presentation. VDSS shall have the right to request revisions to Conceptual or Detailed Proposals at any time during the conceptual or detailed review stages.

X. Federal Approval

If Federal funds will be used as part of the project, VDSS will obtain Federal approval as required by federal regulations prior to completion of the procurement process pursuant to the PPEA.

XI. Selection of Proposer(s) for Detailed Phase

VDSS may determine in its sole discretion that one or more proposers based on the factors outlined in the evaluation factors are fully qualified and best suited to submit a detailed proposal.

XII. Proposal Format for Detailed Proposal

A Detailed Proposal should not depart significantly from the technical approach or financing plan described in the Conceptual proposal. If a proposer departs significantly in either respect, VDSS may reject the Detailed Proposal as non-compliant. In particular, adoption of significant aspects or characteristics of a competing Conceptual Proposal will normally result in disqualification and rejection of a Detailed Proposal. At any time during the Detailed Stage, VDSS

may ask proposer to provide additional information, data, analysis or any other information needed to sufficiently review the project.

The required contents of a Detailed Proposal are listed in the Model Procedures in Section VI.B., entitled Format for Submissions at Detailed Stage.

XIII. Negotiation

In order to avoid exposing the private sector to significant costs associated with moving to the Detailed Phase of the PPEA submission process, VDSS may limit the number of firms that it invites to move to the Detailed Phase to those it deems, in its sole discretion, to be most suitable and fully qualified. At the conclusion of the Detailed Phase one firm will be selected for negotiations relative to entering into a Comprehensive Agreement. If, for any reason, negotiations with the selected firm fail, VDSS may ask other proposers to move into negotiations, until such time as a Comprehensive Agreement is successfully negotiated.

In the event that only one proposer is selected to move forward to the Detailed Phase, other proposers also deemed qualified (but not selected as most suitable) may be asked to stand by while the Detailed Phase is undertaken by the selected firm, and subsequent negotiations relative to the Comprehensive Agreement are held.

XIV. DSS's Reservation of Rights

In connection with any PPEA Proposal, VDSS shall have all rights available to it by law in administering the PPEA proposals that it receives, including without limitation the following:

1. To reject any and all Proposals at any time, for any reason, solely within the discretion of VDSS. Proposers shall have no recourse against VDSS for such rejection. Proposers will be notified in writing of such rejection.
2. Terminate evaluation, review or consideration of any and all Proposals at any time and reserve the right to issue an RFI or RFP for the proposed project.
3. Suspend, discontinue and/or terminate Comprehensive Agreement negotiations with any proposer at any time before the actual authorized execution of a Comprehensive Agreement by all parties.
4. Negotiate with a proposer without being bound by any provision in its Proposal.
5. Decline to return any fee required to be paid by the proposer hereunder, except for initial fees paid by the proposers with unsolicited conceptual proposal where VDSS declines to accept the proposal for consideration.

6. Request revisions to Conceptual and Detailed Proposals at any time during the conceptual or detailed review stages.
7. Submit a proposal for review by outside consultants or advisors selected by VDSS without notice to the proposer. Such consultants or advisors shall be contractually required to be bound by a Protection of Confidential Information Agreement.
8. VDSS recognizes that it may receive Proposals, which have certain characteristics in common yet differ in meaningful ways. In such cases, VDSS reserves the right, in its sole discretion, to treat such a Proposal or any portion of such Proposal received after the original Proposal, as either a competing proposal or a non-competing unsolicited Proposal, and to proceed accordingly.

XV. Additional VDSS Provisions

1. Under no circumstances shall VDSS be liable for, or reimburse any cost incurred by a proposer, whether or not selected for negotiations, in developing a proposal, submitting additional requested information to VDSS or in negotiating a comprehensive agreement.
2. Any and all information VDSS makes available to proposers shall be as a convenience to the proposer and without representation or warranty of any kind. Proposers may not rely upon any oral responses to inquiries.

PROPOSAL STEPS

For unsolicited proposals, VDSS will follow the following steps:

PPEA PROPOSAL STEPS (Unsolicited Proposals)
Receipt of Unsolicited Proposal and Payment of \$5,000 Initial Review Fee
Initial Review of Unsolicited Proposal
Negotiation of Agreement on Protection of Confidential Proprietary Information (if necessary)
Preliminary Acceptance of Proposal and Payment of Balance of Review Fee (\$45,000 non-refundable proposal fee)
Posting of Notice of Acceptance of Unsolicited PPEA Proposal and Invitation for Competing Proposals on eVA and advertised in newspaper. PPEA Proposal Public Volume will be posted on VDSS website.
Receipt of Competing Proposals and Review Fees (\$50,000)
The Public Volume of all Competing Conceptual Proposals will be Posted on VDSS website as they are received, including any updated proposals received during the notice period.
After the close of the posting period, and VDSS's review and agreement on proposers' confidential information designation, the public volume of conceptual proposals will be posted on the VDSS website for sixty (60) calendar days for review by affected local jurisdictions.
Conceptual Proposals Initial Review
VDSS Selection of Proposal(s) for Detailed Proposal Submission
VITA and ITIB Review and Approval of Selection of Proposal(s) for Detailed Proposal Submission
Recommendation and Approval to proceed to Detailed Phase submitted to Cabinet Secretary and Secretaries of Finance and Administration.
Submit Federal PAPD, if required by federal regulations.
Notify Unsuccessful Conceptual Phase Proposers
Invite Selected Proposers to Submit Proposal(s) for Detailed Review
Detailed Proposal Preparation and Submission
Negotiation of Agreement on Protection of Confidential Proprietary Information (if necessary)
Proposer(s) provide Detailed Proposal to Affected Local Jurisdictions for 60 calendar day comment period.
Review of Detailed Proposal(s)
Project Selection for Comprehensive Agreement Phase
Notify Unsuccessful Detail Phase Proposers
Project/Proposal Approval for "Development" by VITA and ITIB.
Negotiation with Selected Proposer
Draft Comprehensive Agreement Completed
OAG Review and Comment on Draft Comprehensive Agreement
OAG Recommended Changes Negotiated with Proposer, if necessary.
Recommended Comprehensive Agreement to Review & Decision Authorities (including Federal Review)
Approval to Proceed from Review & Decision Authorities

OAG Final Review of Comprehensive Agreement
Submit APD and obtain Federal Approval.
Comprehensive Agreement Submitted to the Governor for Review and Approval (and General Assembly, if necessary)